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*Proposed Counsel to the Official
Committee of Unsecured Creditors
of Easterday Ranches, Inc.*

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re:

EASTERDAY RANCHES, INC., et al.,
Debtors.¹

HONORABLE WHITMAN L. HOLT

Hearing Date: March 23, 2021

Time: 10:00 a.m. (PST)

Location:

**United States Bankruptcy Court
Tower Building
2nd Floor Courtroom
402 East Yakima Avenue
Yakima, Washington
Telephonic Access:
Phone Number: 1-877-402-9757
Conference Code: 7036041**

Chapter 11

Lead Case No. 21-00141-11 (WLH)
Jointly Administered

**OFFICIAL COMMITTEE OF
UNSECURED CREDITORS OF
EASTERDAY RANCHES, INC.'S
OMNIBUS RESPONSE AND
RESERVATION OF RIGHTS
CONCERNING 1) USE OF CASH
COLLATERAL AND 2) MOTIONS
OF FEED SUPPLIERS FOR
ADEQUATE PROTECTION**

[Related Docket Nos. 12, 214, 273, 274, 275, 280, 282, 283, 285, 323, and 324]

¹ The Debtors along with their case numbers are as follows: Easterday Ranches, Inc. (21-00141) and Easterday Farms, a Washington general partnership (21-00176).

COMMITTEE'S OMNIBUS RESPONSE AND RESERVATION OF RIGHTS

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1 The Official Committee of Unsecured Creditors of Easterday Ranches, Inc. (the
2 “Ranches Committee”), by and through its proposed undersigned counsel, hereby files
3 this omnibus response and reservation of rights (the “Response”) (i) to approval of the
4 *Debtor’s Emergency Motion For Interim And Final Orders Authorizing Debtor To Use*
5 *Cash Collateral And Granting Adequate Protection; Memorandum Of Points And*
6 *Authorities* [Docket No. 12] (the “Ranches Cash Collateral Motion”)² filed by Easterday
7 Ranches, Inc. (“Ranches” or the “Debtor”), and (ii) to requests seeking payment of
8 adequate protection for feed supplied to Ranches (the “Adequate Protection Motions”),
9 and referred to along with the Ranches Cash Collateral Motion as the “Motions”),
10 including but not limited to requests by Easterday Farms (“Farms”, and together with
11 Ranches, the “Debtors”) as a creditor of Ranches,³ as well as to Sunray Farms, LLC
12 (“Sunray”) [see Docket Nos. 275 and 280], Weyns Farms, LLC (“Weyns”) [see Docket
13 Nos. 273, 274, and 282], Brad Curtis Farms, LLC (“Curtis”) [see Docket Nos. 283 and
14 285], and J.R. Simplot Company, d/b/a Simplot Western Stockmen’s (“Simplot”, and
15 together with Sunray, Weyns, and Curtis, the “Third Party Feed Suppliers”) [see Docket

¹⁷ 2 Although the Ranches Committee does not raise specific objections to the Easterday Farms proposed budget, it reserves the right to do so if it finds specific issues of concern.

18 ³ The Ranches Committee is informed and believes that Farms has already received
19 payment for all of any alleged Washington statutory secret super-priority preparer liens,
20 which the Ranches Committee believes is subject to avoidance or disallowance and as
such, reserves the right to bring such actions or seek defenses to payment on account of
them.

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1 Nos. 214, 323, and 324] absent further hearing on the validity and avoidability of any
2 such liens, and respectfully states as follows:

3 1. Prior to filing this Response, the Ranches Committee worked diligently
4 with the Debtors to address and resolve several concerns raised by the Ranches
5 Committee about the cash collateral usage and related budget and issues about the Third
6 Party Feed Suppliers' demand for adequate protection. Toward that end, the Debtors
7 provided additional information requested by the Ranches Committee late last week, on
8 Saturday, and held discussions up through today. Based on such information and
9 communications, the Ranches Committee has agreed to limit its Response to the Motions
10 at this time, and seeks to resolve its concerns consensually during what it avers should
11 be a further two-week interim cash collateral period.

12 2. The Ranches Committee's concerns arise largely from the fact that
13 notwithstanding efforts to gain a fulsome understanding of critical facts, several key facts
14 remains unclear, including how, when, and where feed was delivered from both Farms
15 and other feed suppliers, and how, when, and to what degree payments were made on
16 account of such feed supplies and other alleged obligations. An understanding of such
17 facts is critical to several important issues, including: 1) whether Ranches' prepetition
18 payment of approximately \$12 million in proceeds from the North Lot sale to Farms is
19 subject to avoidance (and also to rendering payments to Farms on otherwise allowable
20 claims subject to denial under § 502(d) of title 11 of the United States Code, §§ 101 *et*

21
**COMMITTEE'S OMNIBUS RESPONSE
AND RESERVATION OF RIGHTS**

21 03/21/2021 15:52:10 Doc 427 Filed 03/22/21 Entered 03/22/21 15:52:10 Pg 3 of 9

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1 *seq.* (the “Bankruptcy Code”)); 2) the extent to which postpetition payments from
2 Ranches to Farms is on account of prepetition feed delivered by Farms or feed suppliers,
3 which would be improper; and 3) whether any lien asserted by Farms or feed suppliers
4 fall within the statutory requirements of applicable law and, if even otherwise valid,
5 whether such lien may be avoided.

6 3. At bottom, answers to all of these questions are important to Ranches, as
7 well as to Farms and other parties in interest. For example, if payments made by Ranches
8 are avoidable, they may be recoverable by the Ranches estate, and such a recovery could
9 have a significant impact on distributions to unsecured creditors of Ranches.

10 4. Moreover, other cash collateral issues remain unresolved, including the
11 disparity of reporting periods between the Ranches and Farms budgets, which makes it
12 difficult to (i) track the budgets, which should be reconciled before entry of any further
13 order, and (ii) seek to reconcile the disparity between the Farms Committee’s
14 professional fees line item that total \$130,000 per month for eight months (\$1,040,000
15 in total), and the line item for the Ranches Committee, which in its entirety totals
16 \$130,000 for more than four months through June 30, 2020.⁴

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19 4 At minimum, it should be recognized that such line items do not operate as a cap on
20 fees and that more equitable treatment may be revisited as necessary.

1 5. Importantly, the Ranches Committee does not seek to deprive the care and
2 feeding of any cattle located at Ranches. However, it does seek to avoid payments that
3 are unwarranted or that cannot be recovered if it is ultimately determined that Farms or
4 other parties are not in a position to return such payments if other transfers are determined
5 to be avoidable or subject to disallowance. As recognized by the Ninth Circuit
6 Bankruptcy Appellate Panel, § 502(d) of the Bankruptcy Code may be a defense to an
7 administrative claim in addition to prepetition claims. *See In re MicroAge, Inc.*, 291 B.R.
8 503, 508 (9th Cir. B.A.P. 2002) (“For the reasons discussed below, we believe that the
9 better analysis is that § 502(d) may be raised in response to the allowance of an
10 administrative claim.”).

11 6. The Ranches Committee is also concerned about making further payments
12 from Ranches to Farms on account of feed and feed supplies that may have existed
13 prepetition. In addition, to the extent that such payments have already been made by
14 Ranches to Farms (or any other party) for feed and supplies regardless of when
15 “delivered,” no further payment should be made on account of it to avoid a double
16 recovery.

17 7. Lastly, absent further proof, it is unclear why Farms must receive further
18 payment from Ranches at this time, whether for immediately delivered feed and supplies
19 or as prepayments. The Farms cash collateral budget has total projected receipts of
20 \$44.121 million, of which only \$5.45 million is to be payable from Ranches. Indeed,

21
**COMMITTEE’S OMNIBUS RESPONSE
AND RESERVATION OF RIGHTS**

1 based upon the Farms' budget (third line item in receipts entitled "excess feed"), it does
2 not appear that Farms must come out of pocket to provide feed to Ranches. The
3 Bankruptcy Code does not require the Debtors to pay administrative expenses as they are
4 incurred, and the decision regarding whether to restrict the payment of allowed
5 administrative claims until the end of the case is left to the discretion of the Court. *In re*
6 *Colortex Indus., Inc.*, 19 F.3d 1371,1384 (11th Cir. 1994) (holding that the bankruptcy
7 court did not abuse its discretion by exercising its discretion to find that the debtor should
8 not pay a creditor's administrative expenses in the middle of debtor's chapter 11 cases
9 because there were other significant claims against the estate that held a potentially
10 higher priority or importance in the case); *In re Glob. Home Prod., LLC*, No. 06- 10340
11 KG, 2006 WL 3791955, at *3 (Bankr. D. Del. Dec. 21, 2006) (denying the creditor's
12 request for immediate payment on account of its administrative expense claim); *In re*
13 *Garden Ridge Corporation*, 323 B.R. 136 (Bankr. D. Del. 2005) (finding that timing of
14 the payment of an administrative claim is within the discretion of the bankruptcy court);
15 *In re Modern Metal Prod. Co.*, No. BKR 08 B 73908, 2009 WL 1362632, at *2 (Bankr.
16 N.D. Ill. May 13, 2009) (same); *In re Bookbinders' Rest., Inc.*, No. BKY 06-12302ELF,
17 2006 WL 3858020, at *7 (Bankr. E.D. Pa. Dec. 28, 2006) (same). In exercising this
18 discretion, courts have adopted a three-factor test to determine whether to require
19 payment of administrative claims upon request: (a) the prejudice to the debtors in making
20 an early payment; (b) the hardship to the claimant in waiting for payment; and (c) the

21
**COMMITTEE'S OMNIBUS RESPONSE
AND RESERVATION OF RIGHTS**

1 potential detriment to other creditors that could result from an early payment. *See*
2 *Garden Ridge*, 323 B.R. at 143; *In re HQ Global Holdings, Inc.*, 282 B.R. 169, 173
3 (Bankr. D. Del. 2002); *Modern Metal Prod. Co.*, 2009 WL 1362632, at *2. This delay
4 is especially justified here given the long-standing and, at minimum, insider relationship
5 of Farms and Ranches who, based upon information and belief, operated without written
6 contracts—and where legitimate issues exist as to one or more potential avoidable
7 transfers.

8. Finally, the issue of the Third Party Feed Suppliers' request for adequate
9 protection can be resolved in the immediate instance by escrowing the disputed amounts.
10 This will provide adequate protection until the issue of lien rights and issues of avoidance
11 may be properly addressed.

12 **FURTHER RESERVATION OF RIGHTS**

13 The Committee expressly reserves all rights, claims, arguments, defenses, and
14 remedies with respect to the Motions, or any other issues in these Chapter 11 cases, and
15 to supplement, modify, and amend this Response, to seek discovery, and to raise
16 additional concerns or objections in writing or orally at the final hearing on the Motions.
17 The Committee further reserves the right to object to a proposed budget and postpetition
18 payments to insiders as these Chapter 11 cases progress.

19 WHEREFORE, the Committee respectfully requests that this Court: 1) grant the
20 pending cash collateral request on a two-week interim basis only; 2) resolve the Third

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1 Party Feed Suppliers' requests for adequate protection on an interim basis by allowing
2 amounts alleged as owed to be held in escrow pending further determination; 3) grant all
3 relief consistent with the position of the Ranches Committee noted above; and 4) grant
4 all further relief as this Court deems just and proper.

DATED this 22nd day of March, 2021.

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By/s/ *Sam J. Alberts*

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CERTIFICATE OF SERVICE

I certify that on March 22, 2021, I caused the foregoing to be electronically filed with the Clerk of the Bankruptcy Court using the CM/ECF System which in turn automatically generated a Notice of Electronic Filing to all parties in the case who are registered users of the CM/ECF system in this case. The Notice of Electronic Filing for the foregoing identifies all recipients.

By /s/ Sam J. Alberts
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21 21-00141-WLH125 Doc 427 Filed 03/22/21 Entered 03/22/21 15:52:10 Pg 9 of 9

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